

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SUNOPTA GLOBAL ORGANIC
INGREDIENTS, INC.,

Plaintiff,

v.

C.H. ROBINSON WORLDWIDE,
INC.,

Defendant.

NO. CV-10-311-LRS

ORDER RE JURISDICTION

This action was removed from Okanogan County Superior Court on September 16, 2010. (Ct. Rec. 1). The basis for removal was the existence of federal question jurisdiction, specifically the fact that Plaintiff's Complaint alleged a cause of action pursuant to 49 U.S.C. § 14706 *et seq.* (Ex. A to Ct. Rec. 2). Defendant filed an Answer on September 30, 2010 (Ct. Rec. 5) and a Scheduling Order was issued on November 17, 2010 (Ct. Rec. 9). On December 28, 2010, Plaintiff filed an Amended Complaint (Ct. Rec. 10). The Scheduling Order set December 28, 2010 as a deadline for filing "[a] motion to amend pleadings or add named parties." (Ct. Rec. 9 at p. 2). Plaintiff did not file a motion to amend its complaint and it appears that pursuant to Fed. R. Civ. P. 15, a motion and leave of the court was required for the filing of an amended complaint. By December 28, 2010, it appears the time had expired for Plaintiff to file an amended complaint as a matter of course. Nevertheless, on January 7, 2011, Defendant filed an Answer to the Amended Complaint (Ct. Rec. 11). The court construes that Answer as a written stipulation allowing Plaintiff to file its Amended Complaint.

ORDER RE JURISDICTION-

1 The Amended Complaint omits the federal cause of action pled in the
2 original Complaint pursuant to 49 U.S.C. § 14706 *et seq.*, leaving only the
3 common law claims for breach of contract and negligence. The Amended
4 Complaint does not plead a basis for federal jurisdiction and in fact, re-alleges the
5 jurisdiction of the Okanogan County Superior Court which existed prior to
6 removal.¹

7 28 U.S.C. § 1447(c) provides that “[i]f at any time before final judgment it
8 appears that the district court lacks subject matter jurisdiction, the case shall be
9 remanded.” Notwithstanding this rule, removal jurisdiction based on a federal
10 question is determined from the complaint as it existed at the time of removal.
11 *Sparta Surgical Corp. v. NASD*, 159 F.3d 1209, 1213 (9th Cir. 1998). Clearly, a
12 federal question existed at the time of removal in the captioned matter and
13 accordingly, removal jurisdiction was proper and remains proper.² When removal
14 is based on federal question jurisdiction and all federal claims are subsequently
15 eliminated from the lawsuit, “[i]t is generally within a district court’s discretion
16 either to retain jurisdiction to adjudicate the pendent state claims or to remand
17 them to state court.” *Albingia Versicherungs A.G. v. Schenker Int’l Inc.*, 344 F.3d
18 931, 938 (9th Cir. 2003)(“Section 1447(c) does not mean that if a facially valid
19 claim giving rise to federal jurisdiction is dismissed, then supplemental
20 jurisdiction is vitiated and the case must be remanded. Once supplemental
21 jurisdiction exists, it remains, subject to the discretionary provision for remand in
22 section 1441”).

23
24 ¹ Although it is alleged that Plaintiff is a California corporation and that
25 Defendant is a Delaware corporation, federal diversity jurisdiction does not exist
26 pursuant to 28 U.S.C. §1332(a) because it is clear from the face of the Amended
27 Complaint that the amount in controversy does not exceed \$75,000.

28 ²Remand is compelled pursuant to Section 1447(c) when federal subject
matter jurisdiction did not exist at the time of removal.

1 “[I]n the usual case in which all federal-law claims are eliminated before
 2 trial, the balance of factors . . . will point toward declining to exercise jurisdiction
 3 over the remaining state law claims.” *Acri v. Varian Assocs.*, 114 F.3d 999, 1001
 4 (9th Cir. 1997)(en banc), quoting *Carnegie-Mellon v. Cohill*, 484 U.S. 343, 350 n.
 5 7, 108 S.Ct. 614 (1988). This discretion is “dependent upon what ‘will best
 6 accommodate the values of economy, convenience, fairness, and comity’”
 7 *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991), quoting
 8 *Carnegie-Mellon*, 484 U.S. at 351.

9 On February 11, 2011, the Defendant filed a Motion For Summary
 10 Judgment (Ct. Rec. 12), noting the same for hearing without oral argument on
 11 April 4, 2011. The Plaintiff has filed a response to the motion and Defendant has
 12 filed a reply. Briefing is completed, but the court has yet to rule on the motion.
 13 Trial is not scheduled to commence until July 25, 2011.

14 Within ten (10) days from the date of this order, both Plaintiff and
 15 Defendant shall serve and file memoranda directed at the question of whether this
 16 court should continue to exercise supplemental jurisdiction over the pendent
 17 common law claims, or whether it should decline to exercise such jurisdiction and
 18 remand this action to the Okanogan County Superior Court. Determination of
 19 Defendant’s Motion For Summary Judgment (Ct. Rec. 12) is **STAYED** pending
 20 determination of whether the court will continue to exercise supplemental
 21 jurisdiction over the pendent common law claims.

22 **IT IS SO ORDERED.** The District Executive is directed to enter this order
 23 and forward copies to counsel of record.

24 **DATED** this 28th of March, 2011.

25 *s/Lonny R. Suko*

26 _____
 27 LONNY R. SUKO
 28 United States District Judge